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July 22, 2011

RECEIVED  
JUL 22 2011  
MANAGEMENT  
600 BALTIMORE AVENUE, SUITE 301  
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JUL 22 2011

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Public Record

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 F Street, S.W.  
Washington, D.C. 20423-0001

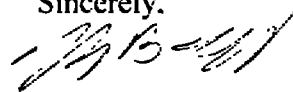
Re: Finance Docket No. 35538, *CSX Transportation, Inc. – Trackage Rights  
Exemption - Norfolk Southern Railway Company.*

Dear Ms. Brown:

Enclosed are the original and 10 copies of the Notice of Exemption, a diskette containing a WORD and pdf version of the Notice, and a check in the amount of \$1,200 is to cover the filing fee.

Please time and date stamp the extra copy of the filing and return it in the enclosed pre-paid envelope. Thank you for your assistance. If you have any questions, please contact me.

Sincerely,



Melanie B. Yasbin

Enclosures

**FILED**  
JUL 22 2011  
SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**  
JUL 22 2011  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35538

CSX TRANSPORTATION, INC.  
—TRACKAGE RIGHT'S EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY.

VERIFIED NOTICE OF EXEMPTION

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Office of Proceedings

JUL 22 2011

Part of  
Public Record

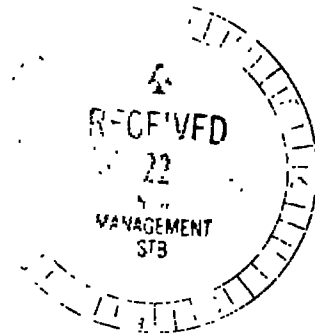
**FILED**  
JUL 22 2011  
SURFACE  
TRANSPORTATION BOARD

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500 Water Street  
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Lou@lgrailaw.com

Counsel for CSX Transportation, Inc.

Dated: July 22, 2011



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35538

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CSX TRANSPORTATION, INC.  
—TRACKAGE RIGHTS EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY.

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VERIFIED NOTICE OF EXEMPTION

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CSX Transportation, Inc. ("CSXT") files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for overhead trackage rights over the rail line of Norfolk Southern Railway Company ("NS") between the point of switch at Track Station 55 + 65 and the point of switch at Track Station 30 + 70 and the portion of the NS track parallel to the CSXT track between the point of switch at Track Station 30 + 55 and Track Station 22 + 75 for a total length of 3,290 feet in Hamilton County, TN (the "Line"). The parties have entered a written agreement, which is not sought as a responsive application in a rail consolidation proceeding.

CSXT and NS both own tracks between Craven's Yard and the riverfront in the vicinity of 19<sup>th</sup> Street in Chattanooga, TN. Currently, NS's single spur track crosses CSXT's single spur track at Chestnut Street, just north of Craven's Yard under provisions of an agreement dated January 30, 1907, as supplemented ("Lewis Street Crossing Agreement").

To take advantage of operating efficiencies and conveniences, CSXT and NS wish to cancel the Lewis Street Crossing Agreement and replace the current crossing diamond with a

turnout and switches lining CSXT's spur into NS's spur north of Craven's Yard. To use the turnout and switches, CSXT needs to acquire trackage rights over the Line from the point of switch at the newly constructed crossover north of CSXT's Craven's Yard northward to the point of switch north of the I-24 Highway overpass.

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), CSXT submits the following information:

**Section 1180.6 Supporting Information**

CSXT proposes to acquire overhead trackage rights over the rail line of NS between the point of switch at Track Station 55 + 65 and the point of switch at Track Station 30 + 70 and the portion of the NS track parallel to the CSXT track between the point of switch at Track Station 30 + 55 and Track Station 22 + 75 for a total length of 3,290 feet in Hamilton County, TN

**(a)(1)(i) Description of Proposed Transaction**

NS owns the Line and has agreed to grant trackage rights to CSXT over the Line to facilitate crossing.

The carriers involved in this transaction and their business addresses are:

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202

Questions and correspondence concerning this notice may be addressed to:

Steven C. Armbrust, Esq.  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202  
(904) 359-1229  
Steven\_Armbrust@csx.com

Louis E. Gitomer, Esq.  
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600 Baltimore Avenue, Suite 301  
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(401) 296-2250  
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**(a)(1)(ii) Consummation Date.**

The transaction is scheduled to be consummated on August 21, 2011.

**(a)(1)(iii) Purpose Sought to be Accomplished.**

CSXT and NS seek to cancel the Lewis Street Crossing Agreement and replace the current crossing diamond with a turnout and switches lining CSXT's spur into NS's spur north of Craven's Yard. By retiring the diamond, the parties will reduce maintenance costs and improve the efficiency of operations. To use the turnout and switches, CSXT needs to acquire trackage rights over the Line.

**(a)(5) List of States in which the Party's Property is Situated.**

CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the Canadian Provinces of Ontario and Québec.

The overhead trackage rights are located in Tennessee.

**(a)(6) Map.**

A map illustrating the involved trackage rights is attached as Exhibit A, which is in color and at the end of this pleading.

**(a)(7)(ii) Agreement.**

A copy of the redacted Trackage Rights Agreement is attached as Exhibit B. An unredacted copy of the Trackage Rights Agreement has been filed under seal.

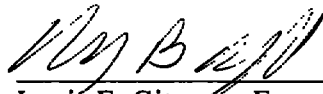
**Labor Protection.**

Any employees of CSXT or NS who are adversely affected by the acquisition of the overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. —Lease and Operate*, 360 I.C.C. 653 (1980).

**Environmental and Historic Matters.**

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction. pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,



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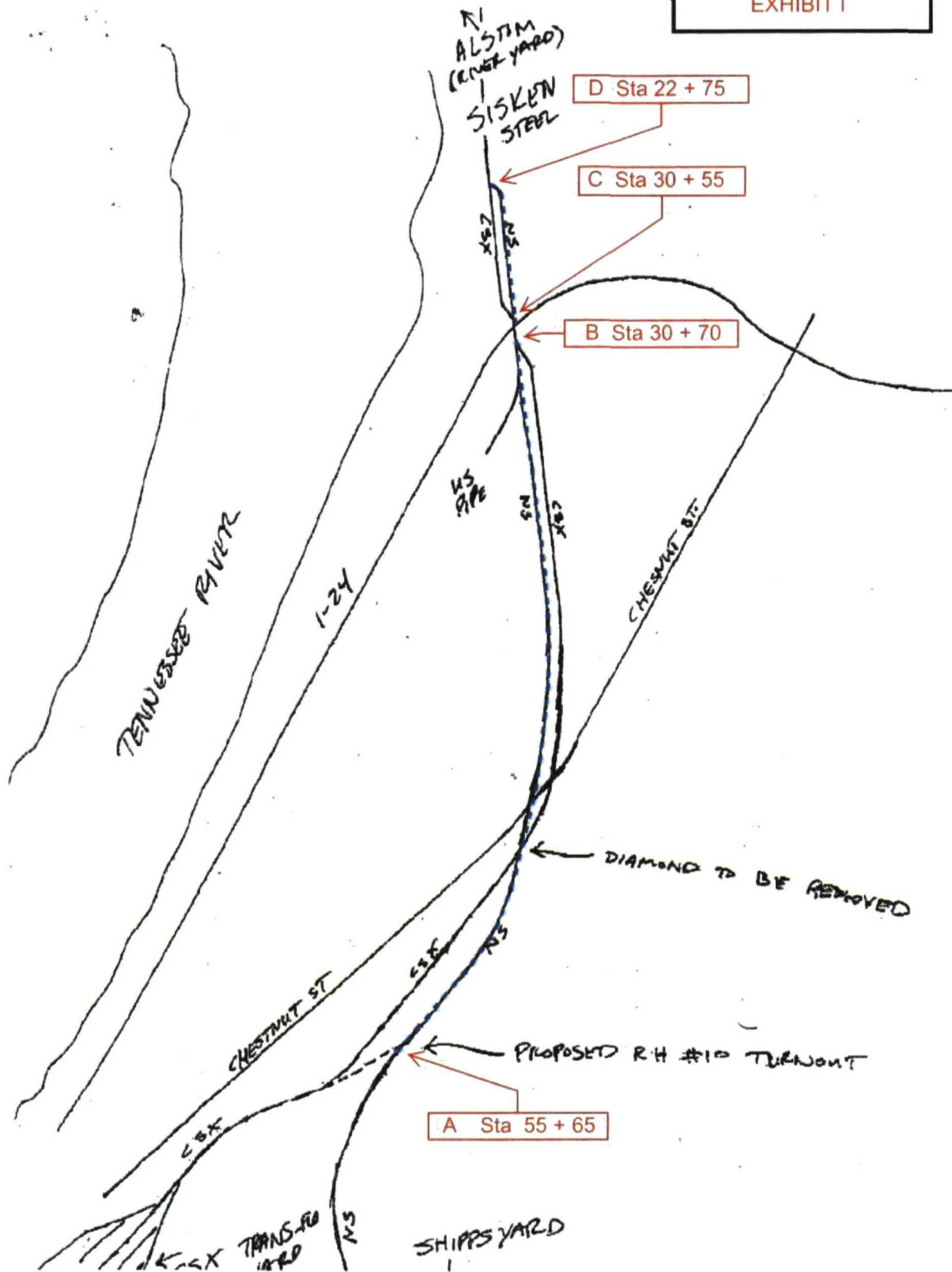
Counsel for CSX Transportation, Inc.

Steven C. Armbrust, Esq.  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-1229

Dated: July 22, 2011

## **EXHIBIT A - MAP**

EXHIBIT I



..... Proposed CSXT Trackage Rights over NSR  
Total Distance 2,495 ft



## **EXHIBIT B - AGREEMENT**

**TRACKAGE RIGHTS AGREEMENT**  
**Between**  
**NORFOLK SOUTHERN RAILWAY COMPANY**  
**And**  
**CSX TRANSPORTATION, INC.**

This **AGREEMENT**, entered into as of this 27<sup>th</sup> day of June, 2011, by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (herein referred to as "Owner" or "NSR") and CSX TRANSPORTATION, INC., a Virginia corporation, (herein referred to as "User" or "CSXT"):

**WITNESSETH:**

**WHEREAS**, NSR and CSXT are each the owner of certain tracks between Cravens Yard and the riverfront in the vicinity of 19<sup>th</sup> St., Chattanooga, TN; and

**WHEREAS**, NSR single spur track crosses CSXT single spur track at Chestnut Street north of Cravens Yard under provisions of agreement dated January 30, 1967 as supplemented ("Lewis Street Crossing Agreement"); and

**WHEREAS**, CSXT and NSR wish to cancel the Lewis Street Crossing Agreement and replace the crossing diamond with a turnout and switches lining CSXT's spur into NS's spur north of Cravens Yard for operating efficiencies and convenience; and

**WHEREAS**, The lineover requires that CSXT acquire trackage rights over approximately 2,495' of NS's spur from the point of switch at the newly constructed crossover north of CSXT's Cravens Yard northward to the point of switch north of the I-24 Highway overpass; and

**WHEREAS**, NSR is agreeable to granting CSXT trackage rights under the following terms and conditions:

**NOW, THEREFORE**, NSR and CSXT hereto, intending to be legally bound, agree as follows:

**ARTICLE 1. GRANT OF TRACKAGE RIGHTS**

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "Trackage Rights" over the following segments of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "1" (hereinafter referred to as the "Join Trackage"):

- A. That portion of NS track beginning at the point of switch at Track Station 55+ 65 at ownership point between NSR and CSXT as indicated on Exhibit I as point A, and extending northwardly to the point of switch at Track Station 30 + 70 at ownership point between NSR and CSXT as indicated on Exhibit I as point B. And that portion of NS track parallel to CSXT track beginning at the point of switch at Track Station 30 + 55 at ownership point between NSR and CSXT as indicated on Exhibit I as point C and extending northwardly to the point of switch at Track Station 22 + 75 at ownership point between NSR and CSXT as indicated on Exhibit I as point D.
- For purposes of this agreement the total length of the Joint Trackage shall be considered as 3,290 feet.

## **ARTICLE 2. USE OF JOINT TRACKAGE**

- A. User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Joint Trackage.
- B. Except as may otherwise be provided by this Agreement, User shall not use any part of the Joint Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Joint Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Joint Trackage by User is interrupted or delayed at any time from any cause.

## **ARTICLE 3. MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Joint Trackage, User's locomotives and crew shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Joint Trackage.
- B. Procedures for qualification and occupancy of the Joint Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee.
- C. With the grant of these Trackage Rights, CSXT and NSR agree to cancel the Lewis Street Crossing Agreement as supplemented and attached hereto as Exhibit II. CSXT shall remove the Lewis Street Crossing signals under the condition that should these Trackage Rights be terminated for any reason, CSXT shall have the right to reinstate the Lewis Street Crossing Agreement at CSXT's sole cost and expense.

#### ARTICLE 4. COMPENSATION

A User will pay Owner in advance on July 1 of each year:

B

#### ARTICLE 5. REVISION OF CURRENT CHARGE

A The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided:

B The Current Charge shall be revised upward or downward each year beginning with the bill rendered for the month of July 2011 to compensate for 75% of the increase or decrease in the cost of labor and material (excluding fuel) as reflected in the Annual indexes or Charge-Out Prices and Wage Rates 1977=100, included in 'AAR Railroad Cost Indexes' and supplements thereto issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent increase or decrease in the index of the latest calendar year (2011 index for 2011), then annual adjustment as related to the index for the previous calendar year (2010 index) for the first annual adjustment, and applying that percent to the Current.

C By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2010, "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2011, "C" to be the Current Charge, "D" to be the percent of increase or decrease, and "E" to be 75% of the increase or decrease, the revised Current Charge stated herein would be revised by the following formula:

$$(1) \quad \frac{B - A}{A} \times D = E$$

$$(2) \quad D \times 75\% = F$$

$$(3) \quad (E \times C) + C = \text{revised Current, effective July 1 of the year being revised.}$$

- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.
- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

#### **ARTICLE 6. PAYMENT OF BILLS**

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

#### **ARTICLE 7. MAINTENANCE OF JOINT TRackage**

- A. Owner shall maintain, repair and renew the Joint Trackage with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be

otherwise provided in Article 13, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

- B. Owner shall perform, at the expense of User, such additional maintenance beyond as described in Article 4A under Owner's cost in current charge as User may reasonably require or request.

#### **ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS**

- A. NSR will install switch from CSXT's crossover at Station 55+65 at sole cost of CSXT.
- B. CSXT will remove Lewis Street crossing diamond between CSXT and NSR at Station 48+05 at NSR's sole cost.
- C. Existing connections or facilities that are jointly used by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- D. Any additional connections to the Joint Trackage which may be required (see the third (3<sup>rd</sup>) recital above) shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
- (i) User or others shall furnish all labor and material, and shall construct, maintain, repair and renew at its sole cost and expense such portions of the track located on the right-of-way of User or others which connect the respective lines of the parties hereto.
  - (ii) Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the additional tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto. Upon termination of this Agreement, Owner may at its option remove the portion of such trackage and appurtenances as may be located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or as otherwise agreed upon. Owner shall credit User the current fair market value for said salvage.

#### **ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS**

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Joint Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage.
- B. If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

#### **ARTICLE 10. MANAGEMENT AND OPERATIONS**

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises when attributable solely to the failure of User to comply with its obligations in this regard.
- B. User in its use of the Joint Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars) over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives or cars which exceed the width, height, weight, or other restrictions or capacities of the Joint Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees, who shall operate its trains, locomotives and cars over the Joint Trackage qualified for operation thereon, and User shall pay to Owner, upon

receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

- D. If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operating on or along Owner's property, Owner shall give written notice to User. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee, except officers, from service on Owner's territory pending an investigation, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, User shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by user's officers and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employee, except officers, shall, upon written request by owner, be withdrawn by User from service on Owner's property, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.
- E. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Joint Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- F. In the event that a train of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's trains) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- G. If it becomes necessary to make repairs to or adjust or transfer the loading of such crippled or defective cars in order to move them off the Joint Trackage, such work



shall be done by Owner, and User shall reimburse Owner for the cost thereof.

- F. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation, all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

#### **ARTICLE 11. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in User's trains on the Joint Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

#### **ARTICLE 12. CLEARING OF WRECKS**

Whenever User's use of the Joint Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provision of Article 13 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

#### **ARTICLE 13. LIABILITY**

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons); (ii) any real or personal property damage of any person (including property of the parties and third persons); (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation); and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Joint Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Joint Trackage involving the trains and locomotives or

both Owner and User, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Joint Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.
- E. In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. For purposes of determining liability pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 5 D (iii), all work performed by Owner shall be deemed performed for the sole benefit of User and User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
- J. Notwithstanding any and all of the foregoing provisions of this article, in the event a Loss occurs while the Joint Trackage is being used by Owner and/or User, and such Loss is attributable solely to the wilful or wanton negligence of only one of the parties to this Agreement, then the party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

#### **ARTICLE 14. CLAIMS**

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense thereof under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11705.
- C. In the event a claim or suit is asserted against Owner or User which the other is duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11705, neither party shall settle or compromise any claim, demand, suit or cause of action to, which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

#### **ARTICLE 15. DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Joint Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

#### **ARTICLE 16. REGULATORY APPROVAL**

- A. Should this Agreement require the prior approval or exemption of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate filing to secure such approval. Owner shall assist and support efforts of User to secure any necessary STB approval or exemption of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the approval or exemption of this Agreement from regulation, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

#### **ARTICLE 17. ABANDONMENT OF JOINT TRackage**

- A. Notwithstanding the provisions of Article 18, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Joint Trackage or any portion thereof. Before filing for regulatory approval or exemption of such

abandonment, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Joint Trackage (or portion thereof) or to discontinue its use thereof.

- B. If User desires to purchase the Joint Trackage (or such portion thereof as Owner has notified User will be abandoned), it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Joint Trackage or portion thereof shall be governed by applicable provisions of the law.
- C. In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Joint Trackage or portion thereof and that it desires to discontinue its use thereof:
- (i). User fails to submit an offer of financial assistance to purchase the Joint Trackage or portion thereof within the time prescribed by statute and applicable regulations, or
  - (ii). User, having made an offer of financial assistance to purchase the Joint Trackage or portion thereof, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
  - (iii). User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
  - (iv). User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms, or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file with the proper regulatory authority seeking approval or exemption of the discontinuance of its operations over the Joint Trackage or portion thereof. If User does not promptly file seeking approval or exemption of the discontinuance of User's operations over the Joint Trackage or portion thereof, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application or exemption filed by Owner is granted but an application or exemption filed by User under Subsection C above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Trackage or portion thereof to User (including securing any necessary regulatory authority) for a price consistent

with the principles of 49 U.S.C. Section 10904

- E. In the event Owner abandons any portion or all of the Joint Trackage under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement
- F. In the event Owner's filing for authority to abandon is denied, User shall withdraw any filing under Subsection C above
- C. Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection

#### **ARTICLE 18. TERM**

- A. This Agreement shall be effective the day and year first above written and shall remain in effect for twenty-five (25) years, and shall continue in effect thereafter until terminated by User upon sixty (60) day advance written notice to Owner of its intent to terminate this Agreement, or until User receives authority to discontinue the right herein granted, whichever occurs first.
- B. Termination of this Agreement shall not relieve or release either party hereof from any obligation assumed, or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof

#### **ARTICLE 19. FORCE MAJEURE**

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders, Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations

#### **ARTICLE 20. ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration before a sole arbitrator and administered by the American Arbitration Association ("AAA") under its then current Commercial Arbitration Rules. Where such rules conflict with the provisions of this Agreement, however, the provisions hereof shall govern. Either party shall have the right to request arbitration by giving written notice to the other party and to any regional office of the AAA. The regional office of the AAA promptly shall send simultaneously to each party in the dispute an identical list of names of not less than eight (8) persons chosen from its panel of arbitrators. Each party to the dispute shall have fourteen (14) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. Each party may strike five (5) names on the submitted list on a peremptory basis. If a party does not return the list within the time specified, all persons named thereon shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance an arbitrator to serve. If the parties fail to agree on any of the persons named, or if an acceptable arbitrator are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without submissions of additional lists. The decision of the of the arbitrator shall be final and binding on the parties as to such matters that are submitted to and determined by the arbitrator, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Unless otherwise agreed, arbitration shall take place in Atlanta, Georgia. The reasonable compensation of the arbitrator and the cost of the arbitration shall be shared equally by the parties to this Agreement.

The parties acknowledge that the subject of this Agreement is a transaction involving interstate commerce, and that the enforceability of this provision is governed by the Federal Arbitration Act, 9 U.S.C. Section 1, et seq.

#### **ARTICLE 21. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the parties hereto. Except as provided in the previous sentence, neither party hereto shall transfer or assign this Agreement or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

#### **ARTICLE 22. NOTICE**

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to Owner: VP Transportation - Operations  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510-2191

If to User: Director Passenger and Joint Facility Agreements  
CSX Transportation, Inc.  
500 Water Street, J315  
Jacksonville, FL 32202

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

#### **ARTICLE 23. GENERAL PROVISIONS**

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties, and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- G. This Agreement is the result of mutual negotiations of the parties hereto, neither



of whom shall be considered the drafter for purposes of contract construction.

- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Witness for Railroad:



NORFOLK SOUTHERN RAILWAY COMPANY

By: 

Name: J.F.M. Eilers

Title: VP Customer Service

Witness for Railroad:



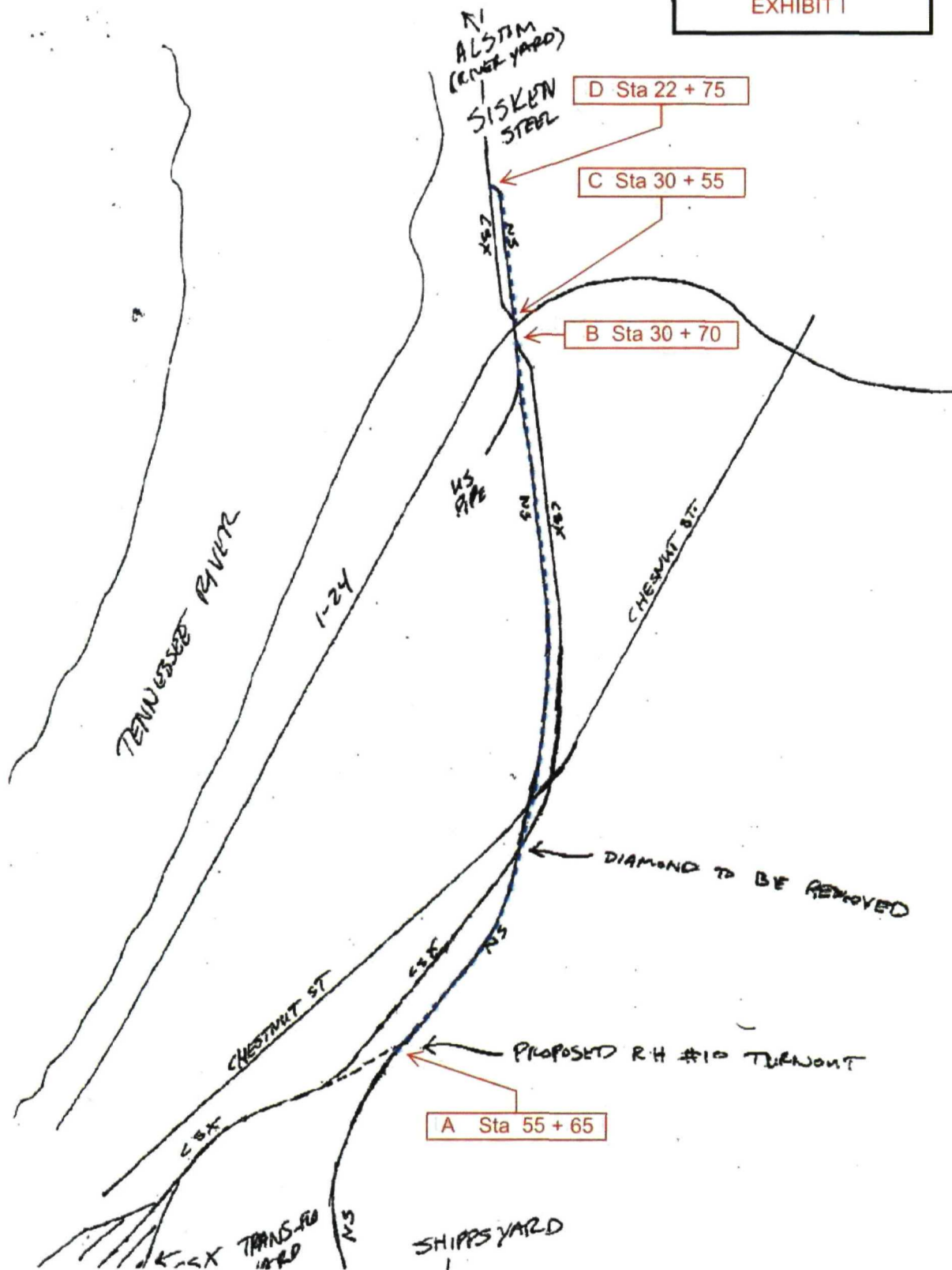
CSX TRANSPORTATION, INC.

By: 

Name: Virginia M. Beck

Title: Director Passenger & Joint Facility Contracts

EXHIBIT I



..... Proposed CSXT Trackage Rights over NSR  
Total Distance 2,495 ft

Exhibit II

Supplemental contract between the Alabama Great Southern Railroad Company, lessee of the Valt Railway of Chattanooga, and the Nashville, Chattanooga & St. Louis Railway, covering the installation and maintenance of crossings, and the installation, maintenance and operation of an interlocking plant, near Lewis Street, in the City of Chattanooga, Tennessee, provided for in contract dated the 30th., day of January 1907.

This agreement, entered into this 15th day of November 1915, by and between the Alabama Great Southern Railroad Company, hereinafter referred to as the Alabama Company, and the Nashville, Chattanooga & St. Louis Railway, hereinafter referred to as the Nashville Company:

WITNESSETH That,

WHEREAS, the parties hereto entered into an agreement dated the 30th., day of January 1907, covering the installation of certain crossings in the tracks of the Nashville Company, near Lewis Street, in the City of Chattanooga, Tenn., and the construction, maintenance and operation of a suitable interlocking plant to provide protection to said crossings; and,

WHEREAS, the above mentioned agreement is still in full force and effect; and,

WHEREAS, the installation of said crossings and interlocking have been postponed from time to time, during which time certain changes have been made in the tracks of both parties hereto and further changes are now proposed in the tracks of both parties hereto; and,

WHEREAS, the above mentioned track changes which have been made, and the further changes now proposed necessitate a much more comprehensive interlocking plant than was originally provided for in the above mentioned agreement; and,

WHEREAS, The Alabama Company is willing to pay the cost of executing the work as provided for in the above mentioned agreement, and the cost of certain other interlocking units now proposed to be installed on its own tracks; and,

WHEREAS, the Nashville Company is willing to pay for all additional interlocking units now proposed to be added to said interlocking plant on account of changes in its tracks, now therefore, it is agreed between the parties to this agreement as follows:

ARTICLE (1) That the blue print No. 6-XI, attached hereto, made in the office of the Signal Engineer of the Nashville Company, dated June 25th., 1915, and signed by the Chief Engineers of the parties to this agreement, shall constitute a part of said agreement, and that said blue print shows the location and arrangement of tracks and signals, and the interlocking tower, and shall also show, by numbers, the interlocking units charged to each party of this agreement.

ARTICLE (2) That the Alabama Company shall furnish the ground for the location of the interlocking tower, at the location shown on the above mentioned print.

ARTICLE (3) That the interlocking plant shall be of the type known as "All Electric", and shall comprise thirty-five (35) operating units and the proper number of spare spaces in the operating machine, for future development, and that the total cost of constructing said interlocking plant shall be divided as follows:

15 Operating units to the Alabama Company,

The above division is to cover all costs chargeable to the construction of said interlocking plant, including cost of tower, engineering, etc. This division, expressed in other words: 15/35ths, to the Alabama Company, and 20/35ths, to the Nashville Company.

ARTICLE (4) The Nashville Company is to employ the necessary teamsters and other employees for the operation and maintenance of said interlocking plant. But any person employed by the Nashville Company in the maintenance and operation of said plant shall be removed from the service on request of the Superintendent of the said Alabama Company, or the said Belt Railway of Chattanooga for good causes shown.

From time to time, the Nashville Company shall render bills against the Alabama Company for its proportion of expenses incurred by the Nashville Company in building said interlocking plant, and upon completion of the plant the Nashville Company shall render final bill or bills against the Alabama Company for its final proportions of the cost of construction, all of which bills the Alabama Company agrees to pay promptly, when presented.

ARTICLE (5) Bills rendered by said Nashville Company against said Alabama Company for the proportion of the cost of construction of said interlocking plant payable by said Alabama Company as hereinabove provided, shall show, separately, the actual cost to said Nashville Company of labor and materials furnished by said Nashville Company in connection with the construction of said interlocking plant, and separate from any amount or amounts paid by said Nashville Company to any Contractor or Contractors under contracts for the construction of said plant or any portion thereof.

10% of the amount of the proportion of the actual cost to said Nashville Company of labor expended which is chargeable under the provisions of this contract to the Alabama Company, and 15% of the amount of the proportion of the actual cost to said Nashville Company of materials furnished by it in connection with the construction of said interlocking plant, properly chargeable under the provisions of this contract to said Alabama Company, shall be added to the items of labor and materials respectively in said bills to cover the cost of supervision and use of tools, freight, handling, inspection and accounting, and no such addition shall be made in said bills to the amount of the proportion chargeable to said Alabama Company under the provisions of this contract, of any amount or amounts paid by said Nashville Company to any contractor or contractors under contracts for the construction of said plant.

ARTICLE (6) That the Nashville Company shall render monthly bills for the maintenance and operation of the plant, against the Alabama Company, for its proportion of the charges, on the basis as above set forth, and the Alabama Company agrees to pay such bills promptly when presented.

ARTICLE (7) Bills rendered by said Nashville Company against said Alabama Company for its proportion of the cost of maintenance of said interlocking plant payable by said Alabama Company as hereinabove provided, shall show, separately, the actual cost to said Nashville Company of labor and materials furnished by said Nashville Company in connection with the maintenance of said interlocking plant.

10% of the amount of the proportion of the actual cost to said Nashville Company of labor expended which is chargeable under the provisions of this contract to the Alabama Company, and 15% of the amount of the proportion of the actual cost to said Nashville Company of materials furnished by it in connection with the maintenance of said interlocking plant properly chargeable under the provisions of this contract to said Alabama Company, shall be added to the items of labor and materials respectively in said bills to cover

ARTICLE (8) That any changes which may be required in the interlocking plant from time to time on account of alterations in track arrangement by any of the parties hereto, or which may be required by properly constituted public authorities, shall be made by the Nashville Company and the expense of making such changes shall be divided between the parties hereto as provided in the following articles.

ARTICLE (9) That if any of the parties hereto shall hereafter rearrange its tracks or provide additional ones within the home signal limits of said interlocking plant, then, and in that event, the said Interlocking Plant shall be re-arranged or extended to provide for the changes in track arrangement; and provided such changes are made at the sole cost and expense of the party desiring such changes.

ARTICLE (10) That in the event alterations of, additions to, or reduction of, said Interlocking Plant shall be required by properly constituted public authorities, such changes shall be made as the parties hereto direct, and each of the parties hereto shall contribute to the cost and expense thereof in proportion to its liability or interest therein; provided, however, that if such alterations, additions or reductions are required for the tracks, signals, etc. of only one of the parties hereto, then, and in that event, the cost and expense thereof shall be borne solely by the party so affected.

ARTICLE (11) That said interlocking plant shall be rebuilt or replaced with one of the same or different type whenever the parties hereto shall so determine. The work of so doing shall be done as the parties hereto shall direct, and shall be paid for by the parties hereto in the same proportion as they shall be required to contribute to the monthly expense of maintaining and operating said plant as above provided, at the time said plant is rebuilt or replaced.

ARTICLE (12) In the event that one or more units are added to or deducted from, said plant at any time, in its re-arrangement, extension, reduction or reconstruction, then, and at the time said units are added or reduced, the proportion of monthly expense of maintaining and operating the said Interlocking Plant, paid or assumed by the parties hereto, shall be re-adjusted so that thereafter the proportions of the said payment of the party or parties for whose tracks said units are added, or reduced, shall be increased or reduced in the proportion that the number of added, or reduced, units shall bear to the total units then contained in said plant.

ARTICLE (13) The Nashville Company shall provide and install the crossing, frogs required for the crossing of the tracks of the Alabama Company over and across the tracks of the Nashville Company, as indicated on blue print No. 1-21, hereto attached, and the Alabama Company shall pay to the Nashville Company the entire cost of furnishing and installing said crossings upon bills rendered by said Nashville Company and in the usual course of accounting. Said bills shall show, separately, the actual cost to said Nashville Company of labor and materials furnished by said Nashville Company in connection with the furnishing and installing of said crossings.

10% of the amount of the actual cost to said Nashville Company of labor expended, and 15% of the amount of the actual cost to said Nashville Company of materials furnished by it in connection with the furnishing and installing of said crossings, shall be added to the items of labor and materials, respectively, in said bills to cover the cost of supervision and use of tools, freight, handling, inspection and accounting.

ARTICLE (14) That after said crossings are installed the Alabama Company agrees to maintain said crossings at its own expense, and upon failure to do so, grant the Nashville Company the right to do so, and to bill upon the Alabama Company for all expense incurred thereto, as provided for in the above mentioned contract, dated January 31st., 1907.

#### ARTICLE (15) (a)

That each party hereto hereby assumes all risk of damage to its own trains, engines, cars and other property while in the space covered by said plant, and all liability for injuries to, and death of, persons and damage to and destruction of, property (including death of, and personal injuries to, as well as damage to the property of, employees as well as others) accruing from or happening in connection with the operation of said trains, engines and cars upon the space covered by said plant, whether such injuries, deaths, damage or destruction be caused by, or due to, any defect in, or failure of, said plant, or by the negligent or wrongful act of any of its officers, agents, servants or employees or of the employee engaged in the operation, maintenance, repair, removal, improve-

best or replacement of said plant, or by means the character of or responsibility for which cannot be determined, it being hereby agreed that for the purpose of this section the persons employed in the operation, maintenance, repair, removal, improvement or replacement of said plant shall be deemed the sole servants and employees of the party for the time being using or operating its trains, engines or cars upon the space covered by said plant; provided, however, that, if an engine or train of either party hereto shall approach a crossing or junction prohibited by said plant while a signal shall be turned against it, and at such a rate of speed that it shall collide with an engine, car or train of the other party hereto which may rightfully be occupying or approaching such crossing or junction, then, and in that event, the party whose engine or train shall cause such collision shall bear the entire cost of damage to, or destruction of, all equipment and property and shall answer all liability for injuries to and death of all persons resulting from such collision.

(b)

If damage to any portion of said plant shall be caused by the wrongful act, neglect or default of the sole employee or employees or by an engine, car or train of either party hereto, all such damage and all cost and expenses resulting therefrom shall be borne and paid solely by such party.

If damage shall result to said plant through the wrongful act, neglect or default of one or more of the employees engaged in the operation, maintenance, repair, improvement, removal, or replacement of said plant, all cost and expenses resulting therefrom shall be charged to the operation, maintenance, improvement, removal or replacement account of said plant, or the cost may be, during the month in which such damage shall occur.

#### ARTICLE (14) (c)

If injury to or death of any employee engaged in the construction, operation, maintenance, repair, removal, improvement or replacement of said plant, or of any other person or persons, shall be sustained in any manner whatsoever by the construction, operation, maintenance, repair, improvement, removal or replacement of said plant, the claim of the parties hereto are held harmless from and against each other by the construction, operation, maintenance, repair, removal or replacement account of said plant, or the cost may be, during the month in which such injury or death shall occur.

(d)

If a collision between the engines, cars or trains of the respective parties hereto shall occur or appear imminent, and such collision or threatened collision shall be caused by the negligence or employees of one party without any knowing negligent or wrongful act on the part of the servants, or employees of the other party, then, and in that event the party whose servants or employees shall cause such collision, or threatened collision, shall pay any and all claims for injury to, or death of persons and loss of, damage to or destruction of property resulting therefrom and shall defend and save harmless said other party from the payment of any such claims.

(e)

If a collision between the engines, cars or trains of the respective parties hereto shall occur or appear imminent, and such collision or threatened collision shall be caused by the knowing negligent or wrongful acts of the servants, or employees of the parties involved therein, respectively, then, and in that event, each party shall defend and keep its own servants, or employees, harmless from and against the loss of, damage to or destruction of property by the other party and its servants, or employees of the engine or car or train upon the engine, car or train; but, if damage to or destruction of property other than that caused by or in the charge of said parties, or injury to or death of any person, or persons other than those immediately involved in such collision, or threatened collision, shall result from such collision, or threatened collision, all costs and expenses resulting therefrom shall be borne equally by the parties hereto whose engines, cars or trains are involved in such collision or threatened collision.

(12)

If either party hereto shall be held liable for and pay any damages for which the other party shall be responsible under this agreement, said other party shall fully reimburse, pay and indemnify such party for and against any outlay such party may make in the discharge of such liability, including costs and necessary incidental expenses, if any; and no judgment of any Court in favor of or against either party hereto shall operate in any manner whatsoever to release or relieve either party hereto from any obligation to defend, reimburse and save harmless the other party hereto as in this agreement provided.

ARTICLE (15) That if, at any time, a difference of opinion or dispute shall arise between the parties hereto in respect to any of the provisions of this agreement, or as to their respective rights, liabilities and duties hereunder, the question so in dispute, if it cannot be settled by the parties themselves, shall be referred to a Board of Arbitration, which shall consist of competent and disinterested persons, skilled in such matters, and shall be selected as follows:

That is to say, each of the parties between whom such differences of opinion or dispute shall have arisen, shall select one arbitrator, and the arbitrators thus chosen shall select one additional arbitrator to preside over such arbitration. The party desiring such arbitration shall give written notice of the same to the other party, stating therein definitely the question or questions in dispute, and naming the person selected as arbitrator by the party giving such notice, and thereupon, it shall become and be the duty of the other party, within fifteen (15) days after receipt of such written notice, to name the arbitrator selected by such other party as above provided; and in the event that it shall fail to do so, then the party serving such notice may select an arbitrator for it, and the arbitrators thus chosen shall select an additional arbitrator. In the event that the arbitrators chosen by either method aforesaid cannot agree within thirty (30) days upon the additional arbitrator, the Judge of the District Court of the United States for the District in which the City of Chattanooga is located may, upon the application of any one of the said arbitrators, appoint the additional arbitrator. The board of arbitrators, thus constituted shall give to each of the parties between whom such difference of opinion or dispute shall have arisen, notice of the time and place of hearing, which shall not be less than twenty (20) nor more than thirty (30) days after receipt of such notice, and at the time and place appointed the said arbitrators shall proceed to the final hearing unless, for a good cause shown, if which the arbitrators, or a majority of them, shall be the judges, such hearing shall be postponed until some later date. The determination of the board of arbitrators, so constituted, or a majority of them, shall be made in writing, and a report thereof delivered to each of the parties between whom such difference of opinion or dispute shall exist, within sixty (60) days from the date of the appointment of the additional arbitrator, to be chosen by said arbitrators, unless the parties in dispute shall agree to enlarge the time within which such report may be so rendered; and such determination, after it shall be final and conclusive upon the parties in dispute upon the question or questions submitted to such board, and may be submitted by any party thereto to any Court of common jurisdiction of Hamilton County, Tennessee, and made the judgment thereof. All expenses, except that of procuring judgment in the Court attending each and every such arbitration shall be borne equally by the parties to the dispute so arbitrated.

ARTICLE (16) This agreement shall inure to the benefit and be binding upon the heirs and successors and legal assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective officers thereunto duly authorized and their respective corporate seals to be hereto affixed and attested by their respective Secretaries the day and year first above written.

Executed in two (2) original counterparts.

Attest:

NASHVILLE, TENN.

By [Signature]  
Secretary

By [Signature]  
General Manager

Attest:

ALABAMA GREAT SOUTHERN RAILROAD CO. (A.R.R.)

By [Signature]  
Secretary

By [Signature]  
General Manager

THIS SUPPLEMENTAL AGREEMENT made and entered into this 27th day of November, 1974, by and between the LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation, hereinafter styled "Louisville Company", party of the First Part, and THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, an Alabama corporation, hereinafter styled "Alabama Company", party of the Second Part.

WITNESSETH, THAT:

WHEREAS, THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, hereinafter styled the "Nashville Company", and the Alabama Company entered into an agreement dated January 30, 1907, covering the installation of certain crossings in the tracks of the Nashville Company, near Lewis Street, in Chattanooga, Tennessee, and the construction, maintenance and operation of a suitable interlocking plant to provide protection to said crossings, and

WHEREAS, the Nashville Company and the Alabama Company entered into a supplemental agreement dated November 15, 1915 which provided for the installation and maintenance of a more comprehensive interlocking plant than was provided for in the original agreement, and

WHEREAS, the Nashville Company and the Alabama Company entered into a supplemental agreement dated January 23, 1937, effective January 1, 1936, providing for a proportion of wages of operator-leverman chargeable exclusive to Nashville Company which was cancelled effective February 1, 1968, by letter dated February 7, 1968, and

WHEREAS, the Louisville Company is the successor of the Nashville Company by virtue of a merger dated August 30, 1957, and

WHEREAS, the Alabama Company, The Cincinnati, New Orleans and Texas Pacific Railway Company and the Chattanooga Station Company, parties of the first part entered into an agreement dated December 3, 1963 with the Louisville Company, as second party, providing for the implementation among them of the agreement dated July 9, 1960 concerning a grade crossing elimination project at Chattanooga, Tennessee, in accordance with the provisions of Plan "N" and Paragraph No. 6 of said agreement dated December 3, 1963 provided for inter alia, the removal of the Lewis Street interlocking, and



WHEREAS, the interlocking at Lewis Street has been removed and the parties desire to supplement the agreement to provide for the changes.

NOW, THEREFORE, in consideration of the benefits to each accruing the parties hereto do mutually agree as follows:

1. The interlocking at Lewis Street has been removed as of November 12, 1972 and the billing for Alabama Company's proportion of the charges adjusted for such removal effective January 1, 1973.
2. The Louisville Company has installed stop signs on both Louisville Company's and Alabama Company's trackage for trains using the crossing. Each company shall hereinafter maintain at its expense the signs governing the trains on tracks owned by it.
3. Except as herein otherwise provided, the agreement of January 30, 1907, and the supplemental agreement of November 15, 1915, shall remain in effect as therein provided.

IN WITNESS WHEREOF, the parties hereto have caused this supplemental agreement to be executed by their duly authorized officer this the day and year first above written.

In presence of: LOUISVILLE AND NASHVILLE RAILROAD COMPANY

*Wm. J. Hester* AS to L&N By *C. N. Wiggins* Vice President-Operations

In presence of: THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

*R. C. Lee, Jr.* AS to AGS By *H. H. Hall* Vice President-Transportation

*Wm. J. Hester*  
Wm. J. Hester

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# **EXHIBIT C - FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35538

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION— NORFOLK  
SOUTHERN RAILWAY COMPANY

Norfolk Southern Railway Company ("NS") has agreed to grant trackage rights to CSX Transportation, Inc. ("CSXT") over NS's rail line between the point of switch at Track Station 55 + 65 and the point of switch at Track Station 30 + 70 and between the portion of the NS track parallel to the CSXT track at point of switch at Track Station 30 + 55 and Track Station 22 + 75 for a total length of 3,290 feet in Hamilton County, TN (the "Line")

The overhead trackage rights will be effective on or after August 21, 2011.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co. - Trackage Rights- BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35538, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC

20423-0001. In addition, a copy of each pleading must be served on Melanie B. Yasbin, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, [Melanie@lgrailaw.com](mailto:Melanie@lgrailaw.com).

Dated:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**VERIFICATION**

State of Florida                    )  
  )ss  
County of Duval                    )

I, Virginia M. Beck, being duly sworn, depose and state that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.

*Virginia M. Beck*

Subscribed and sworn to before me this 25<sup>th</sup> day of July 2011.


*[Signature]*  
Notary Public

My Commission expires: 11-11-2012



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35538 *CSX Transportation, Inc.- Trackage Rights Exemption— Norfolk Southern Railway Company*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of Tennessee.

A handwritten signature in black ink, appearing to read 'Melanie B. Yasbin', is written over a horizontal line.

Melanie B. Yasbin  
July 22, 2011